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BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 90-626-C - ORDER NO. 91-99
JANUARY 28, 1991

IN RE: Application of Southern Bell Telephone)
 and Telegraph Company to Avail Itself)
 of Incentive Regulation of its Intrastate)
 Operations) ORDER RULING
) ON MOTION TO
) COMPEL

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Notice of Motion and Motion to Compel filed January 14, 1991, by Southern Bell Telephone and Telegraph Company (Southern Bell). Southern Bell moves the Commission for an Order requiring the SCCTA to respond fully to those discovery requests which were served on the SCCTA on November 20, 1990, in particular discovery request Nos. 1-2, 1-4, 1-6 and 1-7. According to the Motion, the responses to these discovery requests were due on December 5, 1990 and have yet to be provided.

In response, the SCCTA filed a Return to Southern Bell's Notice of Motion and Motion to Compel on January 21, 1991. The SCCTA objects to the position advanced by Southern Bell's in its Motion to Compel and hereby requests the Commission to deny the Motion to Compel. The Commission has considered the Motion filed by Southern Bell, the response filed by the SCCTA and has reviewed

the file in this matter.

As to Discovery Request No. 1-2, this request states that:

Please provide any and all correspondence or other writings directed to the membership of the SCCTA from the SCCTA and vice versa concerning this proceeding. If any of the documents are asserted to be privileged pursuant to an attorney-client relationship, please identify the date of the document, the author or addressee thereof and recite briefly the nature of the correspondence.

Southern Bell contends that the SCCTA produced one document in response to this discovery request. Southern Bell is of the opinion based on other dockets that it has participated in with the SCCTA that it believes that the SCCTA did not search its file for all documents responsive to this request nor did it ask its members to search their files for responsive documents.

The Commission cannot look behind the response of the SCCTA to determine its veracity. The SCCTA is fully aware of the Rules of Civil Procedure that would require it to answer in good faith using due diligence. The fact that Southern Bell believes more documents are in existence is something that it must determine for itself. The Commission is of the opinion that the SCCTA has responded to the interrogatory request in good faith. However, if this matter was to come up during the course of the hearing, the Commission could determine on its own the creditability and veracity of the SCCTA witness or Southern Bell witness responding to this issue. The Commission will not grant Southern Bell's Motion to Compel in regard to discovery request 1-2.

Discovery Request No. 1-4 requests that the SCCTA:

Identify all persons known by the SCCTA to be familiar

with the subject matter of this proceeding. If any statements have been such from such person(s) please provide a copy of same.

In its response, the SCCTA alleges that it cannot provide a meaningful answer to this data request because it is "too broad in scope." In support of its Motion to Compel, Southern Bell states the question is similar to one of the standard interrogatories from the South Carolina Rules of Civil Procedure. The "standard interrogatory" proposed by Southern Bell in its Motion confines itself to the names and addresses of persons known to the parties or counsel to be "witnesses" concerning the facts of the case. Additionally Standard Interrogatory No. 7 referred to by Southern Bell in support of its Motion also concerns persons known to the parties or counsel to be a "witness" concerning the facts of the case.

Discovery Request No. 1-4 is much broader than the standard interrogatories allowed by the Rules of Civil Procedure. If it is the names of "witnesses" that Southern Bell is seeking, then Southern Bell should ask for those persons known to the parties or counsel to be a "witness," not "all persons known by the SCCTA to be familiar with the subject matter." That is a much broader question and is objectionable on the grounds of relevancy. The SCCTA's objection to Southern Bell's Discovery Request No. 1-4 is reasonable. If Southern Bell wishes to amend its Discovery Request to ask it in such a manner that would include those persons the SCCTA intends to use as witnesses in this proceeding or other relevant questions, Southern Bell may issue an interrogatory to

that effect. The Commission denies Southern Bell's Motion to Compel in response to Interrogatory 1-4.

Discovery Request No. 1-5 requests the SCCTA to provide the complete details of the compensation to be paid to any and all witnesses the SCCTA plans to use in this proceeding. The SCCTA's response was "For Dr. Legler the financial arrangement is being finalized at this time. An update will be provided to you once those discussions are complete." Southern Bell indicates in its Motion to Compel that it concluded from the one page bulletin which was provided to it as an attachment to the SCCTA's Second Supplemental Responses to Southern Bell's First Set of Interrogatories that the SCCTA and the Consumer Advocate had jointly engaged the services of Dr. Legler and that he had already begun work on the case. While there appears to be some disagreement as to how the financial arrangements were made known to Southern Bell concerning the services of Dr. Legler, it is apparent now that Southern Bell has been informed of the fee arrangement concerning the services of Dr. Legler. The delay in receiving this information would not cause Southern Bell any prejudice in proceeding with this matter. The SCCTA has fully responded to Southern Bell concerning this interrogatory.

Lastly, Southern Bell's Discovery Request No. 1-7 states that:

Please provide copies of any newsletters, bulletins, memoranda, correspondence or writings of whatsoever kind, including any marginalia thereon in the possession of each officer and director of the SCCTA which discusses or refers to Southern Bell Telephone and Telegraph Company. For the purposes of this request, only documents dated on and after January 1, 1989 need be provided.

The SCCTA objects to this request on the grounds that it was "too broad and called for discovery materials that is (sic) both irrelevant and not calculated to lead to relevant information." Southern Bell contends that the evidence requested is, indeed, relevant and that the request is not overly broad. Southern Bell goes on in its Motion to redefine its question. Apparently, Southern Bell would wish to obtain documents relating to Southern Bell's revenues, expenses, earnings, and/or cost of capital. It contends that all of these matter are relevant to this proceeding and, therefore, those documents in the SCCTA's possession, custody or control relating to those matters are discoverable.

The question as posed, however, is not limited to information relating to this proceeding nor any issue in this proceeding. The SCCTA would be hard pressed to gather all the information that it could possibly have concerning Southern Bell or any reference to Southern Bell since January 1, 1989. The SCCTA should not be responsible for gathering irrelevant information. Again, if Southern Bell intends to narrow the scope of its question and re-submit another interrogatory, it may do so. The SCCTA should not have to intuit what Southern Bell means by its interrogatories. Southern Bell is limited to the question propounded, and the question as posed is objectionable as being overly broad and irrelevant. The SCCTA's objection is sustained and Southern Bell's Motion to Compel in this regard is denied.

Having addressed all the discovery requests raised by Southern

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Bell, the Commission herein denies Southern Bell's Motion to Compel but will allow it to resubmit additional interrogatories of a narrower scope and relevant nature as discussed herein.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)